

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CARLOS MENDEZ,

No. C-12-4170 EMC

Plaintiff,

v.

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS AND MOTION
TO STRIKE**

CHIEF TERESA BECHER, *et al.*,

Defendants.

(Docket No. 5)

Having considered the motion, all papers that are related thereto, and the argument of counsel, the Court hereby **GRANTS** Defendants' motion to dismiss and **DENIES** Defendants' motion to strike for the reasons stated on the record, and as summarized, in part, below.

The parties confirmed on the record that all Defendants are sued in only their individual capacities and that the first cause of action asserts a claim only against Defendants Montour and Anderson (and not Chief Becher) arising under the Fourth Amendment (and not the Fifth, Ninth, or Fourteenth Amendments). Defendants do not move to dismiss this cause of action as clarified.

The parties confirmed on the record that the second cause of action only states a claim arising under the Fourth Amendment (and not the Fifth, Ninth, or Fourteenth Amendments) against Defendant Becher in her individual capacity (and not Defendants Montour or Anderson). The Court **DISMISSES** without prejudice (with leave to amend within 30 days) Plaintiff's second cause of action. In a section 1983 suit, "each Government official, his or her title notwithstanding, is only liable for his or her own misconduct." *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). A supervisor may be held liable for the actions of his or her subordinates "if there exists either (1) his or her

1 personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between
 2 the supervisor's wrongful conduct and the constitutional violation.'" *Starr v. Baca*, 652 F.3d 1202,
 3 1207 (9th Cir. 2011) (quoting *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir.1989)).

4 The requisite causal connection can be established by setting in
 5 motion a series of acts by others or by knowingly refusing to terminate
 6 a series of acts by others, which the supervisor knew or reasonably
 7 should have known would cause others to inflict a constitutional
 8 injury. A supervisor can be liable in his individual capacity for his
 own culpable action or inaction in the training, supervision, or control
 of his subordinates; for his acquiescence in the constitutional
 deprivation; or for conduct that showed a reckless or callous
 indifference to the rights of others.

9 *Id.* at 1207-08 (internal citations, alterations, and quotation marks omitted).

10 Here, Plaintiff does not make any specific allegations about how Chief Becher's conduct
 11 resulted in his constitutional deprivation, beyond conclusory statements regarding her approving,
 12 ratifying, condoning, encouraging, or tacitly authorizing a pattern and practice of misconduct. Such
 13 conclusory allegations do not suffice to state a cause of action. *See Hydrick v. Hunter*, 669 F.3d
 14 937, 942 (9th Cir. 2012). Post-facto ratification of a singular instance of wrongdoing against the
 15 Plaintiff may not satisfy the causation requirement.

16 The parties confirmed on the record that the third cause of action only asserts a claim arising
 17 under the Fourth Amendment (and not the Fifth, Ninth, or Fourteenth Amendments) against
 18 Defendant Becher in her individual capacity (and not Defendants Montour or Anderson). The Court
 19 **DISMISSES** with prejudice Plaintiff's third cause of action. Plaintiff's third cause of action is
 20 predicated on liability established under *Monell v. Department of Social Services*, 436 U.S. 658, 691
 21 (1978), which provides for municipal liability where there is a custom or policy causing the harm to
 22 plaintiffs. It does not establish individual liability such as that of Chief Becher in her individual
 23 capacity. If Plaintiff sought to name Chief Becher in her official capacity, this cause of action would
 24 nevertheless be barred pursuant to the Eleventh Amendment, as the California Highway Patrol, for
 25 whom Chief Becher works, is a *state* entity, not a municipal entity. *See Quern v. Jordan*, 440 U.S.
 26 332, 342 (1979); *Will v. Mich. Dep't State Police*, 491 U.S. 58, 71 (1989) ("neither a State nor its
 27 officials acting in their official capacities are 'persons' under § 1983").
 28

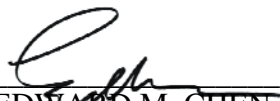
1 In his papers and as confirmed at the hearing, Plaintiff is abandoning his fourth cause of
2 action for assault and battery, his fifth cause of action for false arrest and imprisonment, his sixth
3 cause of action for intentional infliction of emotional distress, his eighth cause of action for violation
4 of California Civil Code section 51.7, and his ninth cause of action for violation of California Civil
5 Code section 52.1 against Chief Becher. Defendants confirmed on the record that they do not move
6 to dismiss these causes of action as against Defendants Montour or Anderson. Plaintiff indicated in
7 his papers and confirmed at the hearing in this matter that he is withdrawing his seventh cause of
8 action for negligent infliction of emotional distress as to all Defendants.

9 Defendant moved to strike Plaintiff's tenth cause of action (which Plaintiff concedes is
10 brought against Officers Montour and Anderson and not against Chief Becher), for negligence, on
11 the grounds that it is redundant with his other state law claims. The motion is brought only as to the
12 claim against Defendant Montour. Even though there is some overlap between Plaintiff's
13 negligence cause of action and his claims, the negligence cause of action is both broader than and
14 legally distinguishable from the other causes of action, such as assault and battery, which requires
15 intent, and false arrest, which would not apply to conduct before Plaintiff was arrested. Thus, the
16 Court **DENIES** Defendants' motion to strike Plaintiff's tenth cause of action.

17 This order disposes of Docket No. 5.

18
19 IT IS SO ORDERED.

20
21 Dated: November 7, 2012

22
23 
24 EDWARD M. CHEN
25 United States District Judge
26
27
28